

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTORS: Stephen R. Lawrence et al.

SERIAL NO.: 10/814,952

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U.S. PATENT NO.: 7,581,227

ISSUED DATE: August 25, 2009

TITLE: Systems and Methods of Synchronizing Indexes

EXAMINER: KimbleAnn C. Verdi

GROUP ART UNIT: 2194

ATTY. DKT. NO.: 24207-10094

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Dated: October 1, 2009 By: Jie Zhang
Jie Zhang, Reg. No. 60,242

REQUEST FOR PATENT TERM ADJUSTMENT

UNDER 37 C.F.R. § 1.705(d)

SIR:

This letter is to request a Patent Term Adjustment (PTA) under 37 C.F.R. § 1.705(d). Specifically, in view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008), the PTA calculation does not account for the total period of delay under Rules 702(a) and 702(b) (adjusted by any delay accorded to Applicant under Rule 704 and any delay accorded to overlapping days under Rule 703(a) and Rule 703(b)).

The USPTO decision of June 22, 2009 dismissed as premature the previous request for correction of the Patent Term Adjustment (PTA) under Rule 37 C.F.R. § 1.705(b), submitted on June 2, 2009. The reason for dismissing the request as premature was that the patent had not issued, and the issue date would be required to make an accurate determination of the patent

term adjustment, if any, to which the Applicants would be entitled. The patent for the application issued on August 25, 2009, as U.S. Patent 7,581,227. The PTA calculation on the face of the patent is incorrect and, therefore, Applicants submit this request within two months of the issue date of the patent. The \$200 fee required by Rule 18(e) is authorized herewith. The calculation of the corrected PTA and the bases for the adjustment are provided below.

Calculation of Periods for Patent Term Adjustment

Under Rule 703(a)

The PTO determined it incurred 832 days of delay under Rule 703(a) for the period beginning 14 months from the filing date (June 1, 2005) until the mailing of a Non-Final Rejection on September 10, 2007. Applicants calculate the relevant period to be from June 1, 2005 to September 10, 2007, and agree with the determination that the PTO incurred 832 days delay under 703(a).

Under Rule 703(b)

The application was filed on March 31, 2004, and the period exceeding three years after the date on which the application was filed begins on April 1, 2007 (three years from the day after the filing date). Currently, Applicants calculate the relevant period to be from April 1, 2007 to August 25, 2009 (Issue date of Patent), or 878 days.

Reduction Under Rule 704

The PTO determined 91 days of Applicant delay. Applicants do not dispute the PTO determination of 91 days of Applicant delay.

Request for Patent Term Adjustment in View of *Wyeth v. Dudas*

On the face of U.S. Patent 7,581,227, the PTO calculated that Applicants are entitled to 787 days of PTO as the difference between the delay under Rule 702(b) and the Applicant delay under Rule 704. According to *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008), the Patent Term Adjustment statute (35 U.S.C. § 154) does not permit the PTO to excuse one source of delay simply because it caused another source of delay by interpreting delays under Rule 703(a)

and Rule 703(b) to be overlapping when such delays do not occur on the same calendar days. Therefore, Applicants request the PTA be based on the sum of delays under Rules 703(a) and 703(b).

Applicants believe that the delays under Rules 703(a) and 703(b) in this case are overlapping 163 days on the same calendar days. In other words, the PTO delay from June 1, 2005 to September 10, 2007 (delay under Rule 703(a)) overlaps with the PTO delay from April 1, 2007 to August 25, 2009 (delay under Rule 703(b)). Therefore, Applicants request the PTA calculation be based on the sum of delays under Rules 703(a) and 703(b) minus the days of Applicant delay, and further minus the overlapping days under Rule 703(a) and Rule 703(b), yielding a calculation of $832 + 878 - 91 - 163 = 1456$ days.

No Terminal Disclaimer

This application is not subject to a terminal disclaimer.

AUTHORIZATION

The Commissioner is hereby authorized to charge the fee set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 19-2555. The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this communication, or credit any overpayment, to Deposit Account No. 19-2555.

Respectfully submitted,

Dated: October 1, 2009

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